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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,488	02/15/2001	Cheryl L. Galante	00216-528001 / T-680	1716

48236 7590 02/23/2007
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EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1617

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	02/23/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/23/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/784,488

Applicant(s)

GALANTE ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7-9, 11, 13, 16-18, 20-21, 23-25, 27, 28, 30-35, 37-41, 43, 44, 46, 47, 50, 51, 53, 54, 57, 61 and 63-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1,5,7-9,11,13,16-18,20,21,23-25,27,28,30-35,37-41,43,44,46,47,50,51,53,54,57,61 and 63-65.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/11/06 has been entered.

2. Claims pending are 1, 5, 7-9, 11, 13, 16-18, 20-21, 23-25, 27, 28, 30-35, 37-41, 43, 44, 46, 47, 50, 51, 53, 54, 57, 61 and 63-65. Claims 1, 9, 16, 17, 24, 31, 37, 43, 50, 57 and 65 have been amended.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 5, 7-9, 11, 13, 16-18, 20-21, 23-25, 27, 28, 30-35, 37-41, 43, 44, 46, 47, 50, 51, 53, 54, 57, 61 and 63-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 9, 16, 17, 24, 31, 37, 43, 50, 57 and 65 as amended introduce new matter as they use the phrases "different in ... firmness" and "the firmer portion providing support to the other portion when both portions are extended from the container". There is no support in the specification for the employment of these phrases in the claims. The newly added limitations were not described in the application as filed, and persons skilled in the art would not recognize in the Applicant's disclosure a description of the invention as presently claimed. The Applicant states that the support for the newly added limitations can be found in "Paragraph 6 of the specification". However, the specification merely mentions, in passing, products where "one portion may be firmer or stronger than, and provide support for, the other portion." See p. 2 of the specification. There no further description or examples in the instant specification of any products containing portions that differ in firmness. It is unclear how to produce such products and what ingredients of the compositions will make the portions of different firmness. All of the examples in the specification describe compositions which differ only in coloring and/or fragrancng ingredients. Therefore, it is the Examiner's position that the disclosure does not reasonably convey that the inventor has possession of the subject matter of the amendment at the time of filing of the instant application. The new limitations recited in the present claims, which were not described in the specification, as filed, introduce a new concept and violate the description requirement of the first paragraph of 35 U.S.C. 112.

Applicant is required to cancel the New Matter in the response to this Office

Action. Alternatively, the Applicant is invited to point out to the parts of the specification which provide sufficient written support for the above-mentioned range. See MPEP 714.02 and 2163.06. *Upon cancellation of the new matter, the rejection of the instant claims as being unpatentable over Swaile et al in view of either Shelton or Banowski et al., of record, will be re-instated.*

Response to Arguments

5. Applicant's arguments with respect to the instant claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Fri from 11am to 7pm.

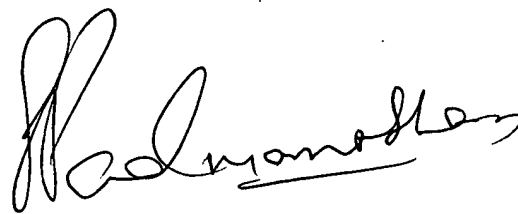
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private

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PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm, M.S., J.D.
Patent Examiner
2/9/07


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